

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG 12 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Rulemaking to Amend Parts 1, 2, 21, and 25
of the Commission's Rules to Redesignate
the 27.5-29.5-30.0 GHz Frequency Band,
to Establish Rules and Policies for Local
Multipoint Distribution Service and for
Fixed Satellite Services

)
)
)
)
)
)
)

CC Docket No. 92-297

DOCKET FILE COPY ORIGINAL

COMMENTS
of the
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Association ("NTCA") submits these comments to the Fourth Notice of Proposed Rulemaking released on July 22, 1996. The NPRM proposes to designate the 31.0-31.3 band for the Local Multipoint Distribution Service ("LMDS") and seeks comments on LMDS eligibility.

NTCA is a national association of approximately 500 local exchange carriers ("LECs") that provide service primarily in rural areas. All NTCA members are "rural telephone companies" entitled to the provisions of 47 U.S.C. § 309(j). NTCA supports designating the 31.0-31.3 band for LMDS. Its comments are directed to that part of the NPRM which suggests that LECs should be prohibited from participating in the auctions and in the provision of ("LMDS") in their wireline service areas. NTCA opposes the proposal.

The public interest will not be served by prohibiting rural telephone companies from bidding for LMDS licenses and providing the service in their wireline service areas or anywhere

No. of Copies received
List ABOVE

026

else in the Nation. Rural telephone companies are able to and interested in participating in this service. Providing the service in their wireline service areas will enhance their ability to bring broadband services to their subscribers in rural areas that are difficult and costly to serve and typically the last to receive video programming services from large providers.

LMDS will provide 1300 MHZ of spectrum at 28 Ghz. The spectrum is sufficient to provide entertainment video, plain old telephone service ("POTS"), interactive video, and high speed data, including high quality teleconferencing, Internet access and other telecomputing systems. Hubs or cells are expected to cover up to 5 km. Most rural LECS are constructing their networks based on a serving area design which provides fiber optics to within 12,000-18-000 feet of the subscriber. As an alternative to providing costly fiber optics on the last miles, LMDS technology can provide the last leg necessary to bring broadband services to the rural subscribers.¹ Permitting rural telephone companies to own licenses in their wireline service areas is the most effective way for the Commission to ensure that the technology is used in conjunction with wireline technology to bring broadband services to rural subscribers.

Other licensees are unlikely to place a high priority on providing service in rural areas. Licenses will be awarded on a BTA basis. The large size of these licensed areas will permit entities that have no special interest or commitment to providing service to rural subscribers to neglect rural areas until late in the license term. The Commission has proposed build out to one-third of the service area in five years and two-thirds in ten years. NTCA is not proposing a

¹ The Commission makes reference to earlier comments by M3ITC which claim that LEC participation will hinder development of fiber optic telecommunication highways. Just the opposite is true for rural areas where LMDS has the potential to be the adjunct that facilitates fiber deployment within feasible distances to the subscriber premises.

change in construction requirements. However, the Commission can take a positive step to encourage deployment of this broadband service in rural areas by permitting rural telephone companies to be eligible to acquire licenses through auctions or partitioning.

The Telecommunications Act of 1996 makes access to advanced services by subscribers in rural areas a principle of universal service.² NTCA urges the Commission to consider this principle in making its decision with respect to eligibility. Use of LMDS in conjunction with other broadband technologies will further the universal service goal of comparable access to advanced services in rural areas. The most effective way to ensure that rural areas receive the service is to encourage rather than prohibit rural LECs from participating in LMDS. Rural LECs should have the option of participating in the auctions or providing the service to partitioned areas obtained through negotiation.

The Commission's concern about LEC warehousing of the spectrum is not an issue in the case of rural LECs. These LECs do not serve the dense areas in the BTAs and would have no interest in warehousing spectrum they must pay for. They also have no incentive to retard the delivery of service to their own areas or to warehouse spectrum to prevent others from entering the local exchange market or competing for the delivery of broadband services to these sparsely populated areas that are the least attractive to competitors.

NTCA believes that it would violate section 309(j) of the Act to prohibit rural LEC participation in this spectrum auction or in the provision of the service. Previously, the Commission stated that it fully intends to meet the objectives of 309(j) in licensing the 28 GHz

² 47 U.S.C. § 254(b)(3)

service.³ However, the Commission stated that it did not believe rural telephone companies needed special preferences to ensure adequate participation in the service.⁴ NTCA urges the Commission to reconsider its approach to the application of 309(j) to rural telephone companies. If the Commission intends to comply with the statute, it cannot write rural telephone companies out of the law each time it fashions competitive bidding rules for a spectrum based service. Any blanket prohibition on LEC participation in LMDS auctions would have that effect. A blanket prohibition would also single out for punitive treatment the many rural telephone companies that are small businesses. For example, all but a handful of NTCA members meet the Commission's proposed small business (average gross revenues for the three preceding years of less than \$40 million) definition but would apparently be ineligible despite their small business status if the Commission prohibits LECs from participating in the auctions or otherwise owning licenses.⁵ This type of punitive distinction is surely not contemplated by 309(j).

Section 309(j) requires instead that the Commission consider special measures to encourage rural telephone companies to acquire licenses for spectrum based services and participate in deploying the services to rural areas. The Commission cannot merely conclude that rural telephone companies need none of the preferences the statute requires it to consider. In this service, as in others, section 309(j) requires that the Commission adopt specific measures to

³ *In the Matter of Rulemaking to Amend Parts 1,2,21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 Ghz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group petition for Pioneer's Preference*, CC Docket No. 92-297, 11 FCC Rcd 53, 120 (1995) ("Third NPRM").

⁴ *Id.*, 124.

⁵ *Id.*, 69.

promote economic opportunities for rural telephone companies and further the delivery of spectrum based services in the rural areas the companies serve. Thus the Commission should ensure, not only, that rural telephone companies are participants in the auctions but it should make available to them the special provisions available to other designated entities. These include reduced up-front payments, bidding credits, installment payments and any other preference that is made available in the auctions.

CONCLUSION

For the above stated reasons, NTCA urges the Commission to permit rural telephone companies to participate in the LMDS auctions. The Commission should also ensure that its competitive bidding rules provide preferences for rural telephone companies.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

By: David Cosson (By Tele)
David Cosson
(202) 298-2326

By: L. Marie Guillory
L. Marie Guillory
(202) 298-2359

Its Attorneys

2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

August 12, 1996

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 92-297 was served on this 12th day of August 1996, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached service list:

A handwritten signature in cursive script, reading "Gail Malloy", is written over a horizontal line.

Gail C. Malloy

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814-0101
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802-0106
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844-0105
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832-0104
Washington, D.C. 20554

Mr. Kent Nilsson, Chief
Network Service Division
Common Carrier Bureau
Federal Communications Commission
2000 L Street, N.W., Room 253
Washington, D.C. 20554

International Transcription Service
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037